



## CHAPTER III: INITIATING A CPA CASE

Revised 4/30/2002

Click here <http://www.isc.idaho.gov/material.htm> to check for updates of this chapter

### Table of Contents

|  |    |
|--|----|
| A. Methods of Initiating a Child Protection Case.....                        | 2  |
| 1. Declaration of imminent danger .....                                      | 2  |
| 2. Endorsement on summons .....  | 3  |
| 3. Petition without emergency removal .....                                  | 5  |
| 4. Expansion of juvenile corrections case .....                              | 5  |
| B. Filing a Child Protection Case .....                                      | 6  |
| 1. Petition .....  | 6  |
| 2. Summons.....  | 7  |
| 3. Supporting affidavit(s) .....   | 8  |
| C. Service of Process .....  | 9  |
| 1. Manner of service .....   | 9  |
| 2. Persons to be served.....   | 10 |
| 3. Complying with the Indian Child Welfare Act (ICWA) .....                  | 10 |
| D. What Facts Support Filing of a CPA Case?.....                             | 11 |
| 1. Jurisdiction.....   | 11 |
| 2. Abandoned .....   | 11 |
| 3. Abused .....  | 11 |
| 4. Neglected .....   | 12 |
| 5. Homeless.....   | 12 |
| 6. Lacks stable home environment.....  | 12 |
| 7. Other children in the home .....  | 13 |
| 8. Aggravated circumstances .....  | 13 |
| 9. Considerations in determining whether a CPA petition should be filed..... | 14 |
| E. What Relief Can be Sought in a Child Protection Case? .....               | 14 |
| 1. Emergency removal .....   | 14 |
| 2. Shelter care.....   | 14 |
| 3. Legal custody or protective supervision .....                             | 15 |
| 4. Protective orders .....   | 15 |
| 5. Child support.....  | 15 |
| F. The Role of the Petitioner.....   | 15 |

|   |    |
|---|----|
| 1. Multi-disciplinary teams (MDTs) .....                      | 16 |
| G. Special Considerations in a Rule 16 Expansion.....         | 17 |
| 1. Expanding a Juvenile Corrections Act Proceeding.....       | 17 |
| 2. Special Issues When Juvenile Ordered to Shelter Care ..... | 19 |
| H. Checklist for Initiating a CPA Case.....                   | 19 |

### A. Methods of Initiating a Child Protection Case

There are four ways to initiate a child protection case pursuant to the Idaho Child Protective Act (CPA).<sup>1</sup> First, law enforcement officers can declare a child to be in imminent danger, and remove the child or the alleged offender from the home.<sup>2</sup> Second, the county prosecutor or a deputy attorney general can file a petition with the court pursuant to the Child Protection Act, and ask the court for an endorsement on summons, which directs law enforcement or agency officials to remove the child from the home, or a protective order, to remove the alleged offender from the home.<sup>3</sup> Third, the county prosecutor can file a petition with the court pursuant to the CPA, without asking for emergency removal of the child pending the hearing on the petition.<sup>4</sup> Fourth, the court can expand a juvenile corrections proceeding into a child protection proceeding.<sup>5</sup>

In emergency situations, it may be necessary to take steps to protect a child at or even before the beginning of the child protection case. The significance of the procedure for declaration of imminent danger is that it allows law enforcement officers to remove the child from the home and place the child in shelter care *without prior court order*. The significance of the procedure for endorsement on summons is that it allows a child to be removed from the home and placed in shelter care *on court order, but without prior notice to parents and opportunity for hearing by the parents*. Generally, a declaration of imminent danger should be used only if the child would be endangered if removal were delayed until a CPA petition could be filed and an endorsement on summons obtained.

If a child is abandoned pursuant to the Idaho Safe Haven Act,<sup>6</sup> a safe haven may take temporary custody of a child. The safe haven must immediately notify either law enforcement or the individual designated by the court in that county to receive such notifications. Once temporary custody of such a child has been taken a child protection act proceeding must be initiated by IDHW.

#### 1. Declaration of imminent danger

A law enforcement officer can declare a child to be in imminent danger, take custody of the child, and turn the child over to IDHW to be placed in shelter care. The officer can remove the child “only where the child is endangered in his surroundings and prompt removal is necessary to prevent serious physical or mental injury to the child.”<sup>7</sup>

<sup>1</sup> Idaho Code §16-1601 et seq

<sup>2</sup> Idaho Code §16-1612.

<sup>3</sup> Idaho Code §§16-1605, 16-1606.

<sup>4</sup> Idaho Code §16-1605.

<sup>5</sup> I.J.R. 16

<sup>6</sup> Idaho code § 39-8202-8205

<sup>7</sup> Idaho Code §16-1612(a)(1).

## CHAPTER III: INITIATING A CPA CASE

If a child is in imminent danger from an alleged offender in the child's home, a law enforcement officer can remove the alleged offender instead of removing the child. The officer can remove the alleged offender only where the child is endangered and the prompt removal of the alleged offender is necessary to prevent serious physical harm or mental injury to the child.”<sup>8</sup>

The CPA authorizes other persons to declare a child in imminent danger, and to remove the child or the alleged offender from the home, if appointed by the court.<sup>9</sup> For example, an administrative order of the court might authorize on-call workers from the Idaho Department of Health and Welfare (IDHW) to declare a child in imminent danger pursuant to the CPA.

If a child is declared in imminent danger, then the county prosecutor or the deputy attorney general files a CPA petition with the court and serves notice of the petition, and the court must hold a shelter care hearing. The shelter care hearing must be within 48 hours of the child's removal, or 24 hours of the alleged offender's removal, not including weekends and holidays.<sup>10</sup> There is more information about the petition and service of process later in this chapter, and there is more information about the shelter care hearing in Chapter IV.

If a child is declared in imminent danger, then court rules require the officer making the declaration to prepare a *Notice of State Action*. The form of the notice is set forth in the court rules, and includes information about the shelter care hearing and the right to counsel. The notice must be given by personal service to the child's parent(s), guardian, or custodian, if the child is removed, or the alleged offender, if the alleged offender is removed. Service must be made at least 24 hours prior to the shelter care hearing. Personal service is not required for persons who cannot be located or are out-of-state.<sup>11</sup>

### 2. Endorsement on summons

A county prosecutor or deputy attorney general can file a CPA petition with the court, and ask the court for an endorsement on summons. The summons is the notice to the parents that a CPA case has been filed. An endorsement on the summons directs law enforcement or agency personnel to take custody of the child, who is placed in shelter care until the shelter care hearing.

The court may issue the endorsement on summons based either on testimony presented on the record, or based on affidavit. The recommended best practice is to file affidavit(s) with the court along with the petition, containing all the information necessary to support the findings and conclusions the court is required to make.

Before issuing an endorsement, the Idaho Code requires the court must make the following findings and conclusions:

- ◆ It appears that the child is within the jurisdiction of the CPA (the grounds for jurisdiction, such as abuse, neglect, etc., are discussed later in this chapter);

---

<sup>8</sup> Idaho Code §16-1612(a)(2).

<sup>9</sup> Idaho Code §16-1612(a)

<sup>10</sup> I.J.R. 32, Idaho Code §16-1605, 16-1612(b),(c)

<sup>11</sup> I.J.R. 32.

- ◆ It appears that it would be contrary to the welfare of the child to remain in the home, and that it would be in the best interest of the child to be placed in shelter care.

Federal law requires the court to make a *contrary to the welfare/best interest* finding that is *case-specific* and *documented* in the court's order because it is the first order sanctioning removal of the child from the home.<sup>12</sup> If this finding is not made, the child will not be eligible for federal IV-E funds, and the omission cannot be corrected at a later date to make the child eligible. The finding cannot be a mere recitation of the language of the statute, but it can incorporate by reference an affidavit that describes the specific circumstances making removal of the child in the child's best interest. If the court makes the finding on the record but fails to document the finding in the order, the omission can be corrected with a transcript of the hearing that documents the case-specific best interest/contrary to the welfare finding.

★★★The finding that remaining in the home is contrary to the child's welfare and that removal from the home is in the child's best interests is **required to preserve the child's IV-E funding.**

In addition to the contrary to the welfare/best interest finding, the court should, as a matter of best practice, review the reasonable efforts made by IDHW to avoid removal of the child from the home. Federal law requires that this finding be made within the first 60 after the child is removed from the home.<sup>13</sup> The Idaho Code requires this finding to be made at the shelter care hearing and at the adjudicatory hearing. Failure to make the a case-specific finding regarding the reasonable efforts of the agency to avoid removal within the first 60 days after removal will result in loss of IV-E funding for the child. To ensure that the finding is made in a timely fashion and to avoid the unnecessary removal of children from the home, court should begin the process of reviewing the agency's efforts at the endorsement hearing.

★★★The finding that IDHW has made reasonable efforts to prevent removal of the child from the home is **required to preserve the child's IV-E funding.**

If it appears that the child is within the jurisdiction of the CPA, but a protective order would enable the child to safely remain at home, then the court may enter a protective order instead of the endorsement on summons.<sup>14</sup> For example, removal of an abusive parent may enable the child to remain safely at home with a non-abusive parent. If the child is in joint custody, the statute requires that the protective order state with specificity the rights and responsibilities of each parent.<sup>15</sup>

After the endorsement on summons or the protective order is issued, the county prosecutor or deputy attorney general serves notice, and the court must hold a shelter care hearing. The shelter care hearing must be held within 48 hours of the child's removal, or 24 hours of the alleged offender's removal, not including weekends and holidays.<sup>16</sup> There is more information about the

<sup>12</sup> 42 U.S.C. §§672(a)(1), 673(a)(2)(A)(i); 45 C.F.R. §1356.21(c)(d). The importance of this finding is discussed in this Manual in Chapter IV.

<sup>13</sup> *Id.*

<sup>14</sup> Idaho Code §16-1606(e)

<sup>15</sup> *Id.*

<sup>16</sup> I.J.R. 32, Idaho Code §16-1605, 16-1612(b),(c).

## CHAPTER III: INITIATING A CPA CASE

petition and service of process later in this chapter, and there is information about the shelter care hearing in Chapter IV.

### 3. Petition without emergency removal

CPA cases are usually initiated as a result of the need for removal of the child or the alleged offender from the home. A CPA case can, however, be initiated without removal of the child or the alleged offender. Generally, this procedure is used for cases of neglect or unstable home environment, where it is clear that improvements are necessary for the health and well-being of the child, but removal of the child is not necessary for the child's protection, and the court's involvement is sought to ensure that the parents participate in remedial services and make the necessary improvement in their care of the child or in the home environment.

In such cases, a petition is filed, process is served, and the matter proceeds to an adjudicatory hearing. A shelter care hearing is not needed because neither the child nor the alleged offender were removed from the home, and the state is not requesting an order for emergency removal pending the adjudicatory hearing. There is more information about the petition and service of process later in this chapter, and there is information about the adjudicatory hearing in Chapter V.

### 4. Expansion of juvenile corrections case

In Idaho, most offenses committed by juveniles are prosecuted under the Juvenile Corrections Act (JCA) and the Idaho Juvenile Rules.<sup>17</sup> In some cases, the court or other participants in the JCA proceeding may have reason to believe or cause for concern that the juvenile is abandoned, abused, neglected, or otherwise falls within the jurisdiction of the CPA. (Grounds for jurisdiction under the CPA is discussed later in this chapter.) Rule 16 of the Idaho Juvenile Rules provides that the court may order a JCA proceeding expanded into a CPA proceeding whenever the court has reasonable cause to believe that a juvenile living or found within the state comes within the jurisdiction of the act. Practitioners commonly refer to such cases as "Rule 16 expansions."

Upon expansion, the court may order the child placed in shelter care under the CPA if it is in the best interest of the juvenile and is needed for the juvenile's protection. Federal law requires the court to make a best interest finding that is *case-specific* and *documented* in the *first order* sanctioning removal of the child from the home.<sup>18</sup> If this finding is not made, the child will not be eligible for federal funding, and the omission cannot be corrected at a later date to make the child eligible. The finding cannot be a mere recitation of the language of the statute. It can incorporate by reference written reports in the court files, such as reports by juvenile probation officers.<sup>19</sup>

★★★The finding that remaining in the home is contrary to the child's welfare and that removal from the home is in the child's best interests is **required to preserve the child's IV-E funding**.

<sup>17</sup> See Idaho Code §20-501 *et seq.*, and I.J.R. 1 *et seq.*

<sup>18</sup> 42 U.S.C. §§672(1)(1), 673(a)(2)(A)(i); 45 C.F.R. §1356.21(c),(d)

<sup>19</sup> If the court makes the finding on the record but fails to document the finding in the order, the omission can be corrected with a transcript of the hearing that documents the case-specific finding best interest finding.

If expansion is ordered, then notice must be given to the parents and others the same as in any CPA case. If shelter care is ordered, then a shelter care hearing must be held, the same as in any CPA case. The case then proceeds to adjudicatory hearing, the same as in any CPA case. The juvenile proceeding continues unless otherwise ordered by the court.

When an expansion is ordered, it is essential that the prosecutor promptly contact the appropriate local IDHW staff, and that the prosecutor and the agency conduct appropriate investigation pending the shelter care and/or adjudicatory hearings, because the burden remains with the prosecutor to go forward and prove the case the same as in any other CPA proceeding. The filing of a petition is not required, but the prosecutor may want to file a petition, so that the pleadings conform to the case the prosecutor intends to make.

Sometimes, there is reason for concern that the child is within the jurisdiction of the act, but there is insufficient evidence to support a finding of reasonable cause to believe that the child is within the jurisdiction of the act. In such cases, some Idaho courts have entered expansion orders directing the prosecutor and the agency to investigate the matter and report back to the court. Proposed changes to Rule 16 are currently in progress that would expressly provide for and define such orders.

## **B. Filing a Child Protection Case**

To file a child protection case, the county prosecutor or deputy attorney general will need to prepare the following documents:

- ◆ Petition
- ◆ Summons
- ◆ Affidavit(s), if a child was declared in imminent danger, or if removal of the child or the alleged offender is sought prior to the adjudicatory hearing.

### **1. Petition**

The contents of the petition are specified by statute. [Footnote: Idaho Code §16-1605.] It is important that the petition be properly prepared. Defects in the petition can result in a great deal of time spent on motions to dismiss, motions to clarify, and motions to amend, that could be avoided simply by careful attention to the preparation of the petition.

The petition must be entitled “In the Matter of \_\_\_\_\_, a child (children) under the age of eighteen years.” It must be signed by the county prosecutor or deputy attorney general and verified. It must include the following:

- ◆ The facts which bring the child within the jurisdiction of the CPA, including a description of the actions of each parent. The grounds for jurisdiction, such as abuse or neglect, are described later in this chapter.
- ◆ The name, birthdate, sex, and residence address of the child.
- ◆ The name, birthdate, sex, and residence address of all other children living at or having custodial visitation at the same home as the child named in the title to the petition.
- ◆ The names and residence addresses of both the mother and father, guardian or other custodian. If none of these persons reside or can be found within the state, the name of any known adult relative residing within the state.

## CHAPTER III: INITIATING A CPA CASE

- ◆ The names and residence addresses of each person having sole or joint legal custody of any of the children named in the petition.
- ◆ Whether a court has adjudicated the custodial rights of the parents of the child named in the title of the petition, and if so, the custodial status of the child.
- ◆ Whether there is a legal document controlling the custodial status of any of the children.
- ◆ Whether the child is in shelter care, and if so, the type and nature of the shelter care, the circumstances justifying the shelter care, and the date and time the child was placed in shelter care.
- ◆ If the child has been or will be removed from the home, the petition must state that:
  - i) remaining in the home was contrary to the welfare of the child,
  - ii) it is in the best interest of the child to place the child in the custody of IDHW or other authorized agency, and
  - iii) reasonable efforts were made to prevent the removal of the child or reasonable efforts to prevent placement were not required as the parent subjected the child to aggravated circumstances.<sup>20</sup>

In many cases, the attorney filing the petition will not know and cannot reasonably determine some of the elements required by the statute prior to filing the petition. In such case, the element can be omitted, but the petition must state that it is not known. The petition may be based on information and belief, rather than on the personal knowledge of the person(s) signing the petition, but the petition must state the basis for the information and belief.

The petition should also include the following:

- ◆ If the state is seeking a determination that the parent subjected the child to aggravated circumstances, a statement of the grounds and the facts that bring the parent's actions within those grounds. "Aggravated" circumstances is discussed later in this chapter.
- ◆ Whether the child is an Indian child, and if so, the name of the child's Indian custodian (if any) and Indian tribe. The purpose is to ensure an early determination of whether the proceeding is subject to the requirements of the Indian Child Welfare Act, which is discussed later in this chapter.

### 2. Summons

The summons is a notice to the parent(s), which must be served on the child's parents, guardian, and custodian, along with a copy of the petition.<sup>21</sup> There must be a separate summons for each person to be served. The form of the summons is set forth in the Idaho Juvenile Rules.<sup>22</sup> The summons should be prepared by the attorney filing the petition, to be signed by the court clerk. The summons provides essential information to the parents, most importantly:

- ◆ the date and time for shelter care hearing [or the adjudicatory hearing, if removal of the child or alleged offender has not been made and is not requested], and
- ◆ the right to counsel, including appointed counsel for parents who cannot pay for an attorney, and directions for requesting appointed counsel.

<sup>20</sup> Aggravated circumstances is discussed later in this chapter. There is more information about "reasonable efforts" in Chapter IV.

<sup>21</sup> Idaho Code §§16-1606, 16-1607. There is more information about service of process later in this chapter.

<sup>22</sup> I.J.R. 34.

- ◆ that if the parent fails to appear, the court may proceed in the parent's absence, and may be subject to proceedings for contempt of court.

The form for the summons set forth in the rule does not include language for the endorsement on summons. If the petitioner is seeking an endorsement on summons, language should be included in the summons for the endorsement.

### 3. Supporting affidavit(s)

A supporting affidavit is essential for the shelter care hearing where the child has been declared in imminent danger, where the petitioner (the county prosecutor or deputy attorney general) is asking for an endorsement on summons, or where the state is asking for a protective order. The affidavit should contain all the information necessary to support the findings and conclusions the court is required to make.

Before issuing an endorsement on summons, the court must make the following findings and conclusions:

- ◆ It appears that the child is within the jurisdiction of the CPA (the grounds for jurisdiction, such as abuse, neglect, etc., are discussed later in this chapter).
- ◆ It appears that it would be contrary to the welfare of the child to remain in the home, and that it would be in the best interest of the child to be placed in shelter care.

Before issuing a shelter care order, the court must make the following findings and conclusions: a CPA petition has been filed.

- ◆ there is reasonable cause to believe that the child comes within the jurisdiction of the CPA (the grounds for jurisdiction, such as abuse, neglect, etc, are discussed later in this chapter).
- ◆ reasonable efforts to prevent placement of the child in shelter care were made but were not successful, or reasonable efforts to prevent placement could not be made because of immediate danger to the child;
- ◆ the child cannot be placed in the temporary sole custody of a parent having joint custody of the child
- ◆ it is contrary to the welfare of the child to remain in the home, and it is in the child's best interest to be placed in shelter care pending the adjudicatory hearing.<sup>23</sup>

Federal law requires the court to make a *contrary to the welfare/best interest* finding that is *case-specific* and *documented* in the *first order* sanctioning removal of the child from the home.<sup>24</sup> In most cases, the first order will be either the endorsement on summons or the shelter care order. If this finding is not made, the child will not be eligible for federal funds, and the omission cannot be corrected at a later date to make the child eligible.<sup>25</sup> The finding cannot be a mere recitation of the language of the statute, but *it can incorporate by reference an affidavit* that describes the specific circumstances making removal of the child in the child's best interest.

<sup>23</sup> There is more information about the key decisions the court must make at the shelter care hearing in Chapter IV, part D

<sup>24</sup> 42 U.S.C. §§672(a)(1), 673(a)(2)(A)(i); 45 C.F.R. §1356.21(c)(d)

<sup>25</sup> If the court makes the finding on the record but fails to document the finding in the order, the omission can be corrected with a transcript of the hearing that documents the case-specific best interest/contrary to the welfare finding



## CHAPTER III: INITIATING A CPA CASE

Filing an affidavit that includes this information along with the petition is the best way to ensure compliance with federal laws and the child's eligibility for federal funds.

The recommended best practice in all cases is to prepare supporting affidavits from the investigating authorities (usually IDHW caseworkers, sometimes law enforcement officers, sometimes medical or school personnel) that include all the supporting information for all the facts that must or should be alleged in the petition. This serves several important functions. First, it assists in preparation of the petition. Second, it can tighten the analysis of the evidence and the case by the agency, and the county prosecutor or deputy attorney general. Third, the availability of an affidavit that thoroughly documents the current information promotes the potential for informed settlement and appropriate stipulations.

The supporting affidavits should be attached to the petition, to ensure service of process of the affidavits along with the petition and summons.

### C. Service of Process

#### 1. Manner of service

Service of process must be made by personal delivery of an attested copy of the summons, with the petition attached. Service of process must be completed at least 48 hours prior to the time set for the hearing in the summons. Service of process must be made by the sheriff or another person appointed by the court. The summons includes a return of service, which must be completed and filed with the court, to show that service has been made.<sup>26</sup>

If it is impracticable to personally serve summons, the court may order service by registered mail, or by publication, or both. If service is by publication, the summons must be published once a week for two consecutive weeks in a newspaper of general circulation in the county, and the newspaper in which notice is to be published must be designated by the court in the order for publication of the summons. The county in which notice is published should be the county in which the person to be served is most likely to be found. If service is to be made by registered mail, it should be made to the address most likely to give the person to be served actual notice.

Where personal service is impracticable, the county prosecutor or deputy attorney general responsible for the case should seek court approval of service by registered mail and publication as soon as possible, so that service can be completed prior to the adjudicatory hearing.<sup>27</sup> The request should be by written motion. The motion should either be verified and include the following, or should be accompanied by a supporting affidavit that includes the following:

- ◆ a description of the efforts made to identify, locate, and serve the missing party,
- ◆ a statement of the address where service by registered mail is most likely to achieve actual notice
- ◆ a description of why that address is most likely to achieve actual notice,
- ◆ a statement of the newspaper of general circulation most likely to achieve actual notice, and
- ◆ a description why that newspaper is most likely to achieve actual notice.

---

<sup>26</sup> Idaho Code §16-1607

<sup>27</sup> There is information about the adjudicatory hearing in Chapter V.

The motion should also be accompanied by a proposed order. The proposed order should include findings that personal service is impracticable, and that service by registered mail at the specified address and by publication in the specified newspaper are most likely to achieve actual notice. The proposed order should require filing of an affidavit of service and an affidavit of publication, to show completion of service in accordance with the order.

## **2. Persons to be served**

Service of process must be made to each of the child's parents, legal guardian, or custodian. This includes non-custodial parents, putative fathers, and adoptive parents, but does not include a parent whose parental rights have been terminated. Identification and joinder of all parents is essential for several reasons. First, it is essential to the protection of substantial individual rights that these persons have notice and opportunity to participate. Second, the sudden appearance of a missing party later in the process can cause substantial disruption, both to judicial proceedings and to the life of the child. Finally, the participation of these parties may prove essential to achieving the ultimate goal - a safe home and loving family for the child. To the extent there are issues of paternity, putative fathers should be identified and joined, and the petitioner should be prepared to seek orders for paternity testing, to resolve issues as to paternity as early as possible in the proceedings.

## **3. Complying with the Indian Child Welfare Act (ICWA)**

The Indian Child Welfare Act establishes special procedural and substantive requirements for Indian children in CPA cases.<sup>28</sup> If the child is an Indian child, the parent or Indian custodian and the child's Indian tribe have the right to intervene.<sup>29</sup> Notice must be given by registered mail, return receipt requested, to the parent or Indian custodian and to the Indian child's tribe, of the pending proceedings and their right to intervene. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice must be given to the Secretary of the Interior, who has 15 days after receipt to provide notice to the parent or Indian custodian and the tribe.<sup>30</sup>

For purposes of the Indian Child Welfare Act, a child is an Indian child if the child is a member, or is eligible for membership in an Indian tribe.<sup>31</sup> If there is a question as to whether the child is a member or is eligible for membership in a particular Indian tribe, it may be necessary to request a determination of that issue from the Indian tribe. Each Indian tribe establishes the

<sup>28</sup> 25 U.S.C. §1901 *et seq*

<sup>29</sup> 25 U.S.C. §1911(c)

<sup>30</sup> 25 U.S.C. §1912(a). That section further provides that no foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of Interior. It also provides that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such hearing. Presumably, the reference in ICWA to foster care placement proceeding would mean the adjudicatory hearing under Idaho law, not the shelter care hearing. Otherwise, the court would be unable to make emergency placement necessary for the child's protection while efforts to comply with ICWA were underway

<sup>31</sup> 25 U.S.C. §1903(4).

## CHAPTER III: INITIATING A CPA CASE

requirements that must be met to be a member of that tribe, and the tribe's determination of membership is final, and is entitled to full faith and credit.<sup>32</sup>

Identification of Indian children and joinder of the child's Indian tribe is important, and not only because it is required by federal law. Compliance with ICWA is important to protect the unique and substantial interest of the tribe and the Indian child, and because the tribe often has information regarding the child and the family that is critical to assisting the court in good decision-making regarding the child. In addition, the sudden appearance of a tribal claim at a later point in the process can cause major disruption to the judicial proceedings, and more importantly, to the life of the child. Such disruption can be avoided by early and diligent efforts to determine whether the child is an Indian child, and to provide notice to the child's tribe.<sup>33</sup>

### D. What Facts Support Filing of a CPA Case?

#### 1. Jurisdiction

A child is within the jurisdiction *of the court* if the child lives or is found within the state. The child is within the jurisdiction *of the act* if the child is abused, abandoned, neglected, homeless, or lacks a stable home environment. Other children in the home may also come within the jurisdiction of the act.<sup>34</sup>

#### 2. Abandoned

Idaho law defines "abandoned" as "the failure of a parent to maintain a normal parental relationship with his child including, but not limited to, reasonable support or regular personal contact." The statute further provides that failure to maintain this relationship for one year is *prima facie* evidence of abandonment.<sup>35</sup>

#### 3. Abused

Idaho law defines "abused" as any case in which a child has been the victim of

- (a) conduct or omission resulting in skin bruising, bleeding, malnutrition, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or the circumstances indicate that such condition or death may not be the product of accidental occurrence, or
- (b) sexual conduct, including rape, molestation, incest, prostitution, obscene or pornographic photographing, filming or depiction for commercial purposes, or other similar forms of sexual exploitation harming or threatening the child's health or welfare or mental injury to the child.<sup>36</sup>

<sup>32</sup> 25 U.S.C. §1911(d); *see e.g.* Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978); *see also* Indian Tribe v. Doe, 123 Idaho 464, 849 P.2d 925 (1993) and Doe v. Doe, 127 Idaho 452, 902 P.2d 477 (1995), for Idaho decisions applying ICWA.

<sup>33</sup> In some cases, the proceedings must be transferred to the tribal court for resolution. 25 U.S.C. 1911(b). ICWA also establishes preferences for placement of Indian children. There is more information about ICWA in Chapter VI, Part A.1

<sup>34</sup> Idaho Code §16-1603

<sup>35</sup> Idaho Code §16-1603(1)(a), §16-1602(2)

<sup>36</sup> Idaho Code §16-1603(1)(b), §16-1602(1)

#### 4. Neglected

Idaho law defines a “neglected” child as one:

- (a) who is without proper parental care and control, or subsistence, education, medical or other care or control necessary for his well-being because of the conduct or omission of his parents, guardian or other custodian or their neglect or refusal to provide them.... or
  - (b) whose parents are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity.<sup>37</sup>
- [Footnote:.]

Idaho law specifically provides that a child will not be deemed neglected solely because a child’s parent or guardian chooses spiritual treatment for a child instead of medical treatment, but there is statutory authority for the court to order emergency medical treatment for a child, whether or not the child is within the jurisdiction of the act.

#### 5. Homeless

The CPA does not define “homeless.” The purpose of this provision is to address two types of situations. The first is where a child has come into contact with authorities, and is apparently homeless, because no parent or other custodial adult can be located, and the child needs a home while authorities investigate the situation. Typically the child is a runaway, or a juvenile whose parents refuse to allow the child home, sometimes after the juvenile’s release from incarceration.

The second is where a family is homeless, and therefore the children are homeless. The purpose of including homelessness in the CPA is not to impose further displacement on an already displaced family. The purpose is to establish a statutory basis to provide services and shelter to the children when the parents are unable or unwilling to do so. In such cases, the reasonable efforts of the agency to provide housing or employment assistance, and the parent’s ability and willingness to participate in those services, becomes an issue in the adjudication phase, as well as in the disposition phase. If the parents are not able to provide the child with a home despite agency assistance, or are unwilling to accept assistance that would enable the parent to provide the child a home, then such evidence supports a determination that the child comes within the jurisdiction of the act.

#### 6. Lacks stable home environment

The CPA does not define lack of a “stable home environment.” This provision should not be interpreted to provide a basis for state intervention simply because the parent’s lifestyle is outside the norm. Rather, it should be limited to those situations where the seriousness of the harm to the child is similar to that of the other bases for jurisdiction.

Often, the situations that fall in this category also fall into the category of neglect. But there are two types of situations that fall into this category that might not necessarily fit into the category of neglect. One is the “drug house” – where an occupant of the home is a manufacturer or distributor of illegal drugs, and the nature of the substances and people frequently in and through the house endangers the safety of the child or children in the home.

<sup>37</sup> Idaho Code §16-1603(1)(b), §16-1602(21)

## CHAPTER III: INITIATING A CPA CASE

Another situation that might fall within this category is the violent home – where the children are not directly abused, but they regularly witness domestic violence. Like homelessness discussed above, the purpose of this provision is not to punish the adult victim of domestic violence by taking the children away, but rather, to establish a statutory basis to provide services and shelter to the child when the parent is unable to do so. And like homelessness discussed above, the reasonable efforts of the agency to provide assistance to the adult victim, and the adult victim's ability and willingness to participate in those services, becomes an issue in the adjudication phase, as well as in the disposition phase. If the parent who is the adult victim of domestic violence is not able to provide the child with a safe home despite agency assistance, or is unwilling to accept assistance that would enable the parent to provide the child a safe home, then such evidence supports a determination that the child comes within the jurisdiction of the act. (The court can enter protective orders that expel the abusive parent from the home, or that limit contact between the abusive parent and the non-abusive parent or the child, which is discussed later in part E.)

### **7. Other children in the home**

An issue that frequently arises in child protection cases is what to do about other children in the home when one of the children is abandoned, abused, or neglected. If one child is abused, abandoned or neglected, it cannot simply be presumed that the others are also. But neither can it be assumed that the other children are safe. Idaho law provides that, if a court has taken jurisdiction of a child, it may take jurisdiction over another child, if the other child is living or having custodial visitation in the same household, and if the other child has been exposed to or is at risk of being a victim of abuse, abandonment or neglect.<sup>38</sup>

### **8. Aggravated circumstances**

The concept of aggravated circumstances was added to the law of child protection to promote permanency for the child. The purpose is to identify those cases in which no effort will be made at reunification, so that efforts to find a new family who will provide the child with a safe home and loving family can be initiated promptly, and so that the permanent placement of the child with that family can be implemented promptly. (Permanency planning, reunification plans, and alternative permanent placement plans are further discussed in Chapters VI and VII.)

Generally, if aggravated circumstances is an issue, then it should be alleged in the CPA petition, and determined by the court at the adjudicatory hearing.<sup>39</sup> The statute specifically identifies the following as aggravated circumstances:

- ◆ abandonment,
- ◆ torture,
- ◆ chronic abuse,
- ◆ committed murder or voluntary manslaughter,
- ◆ aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter,

---

<sup>38</sup> Idaho Code §16-1603(2). The other child must be named in the petition or amended petition, the parents or legal guardians must have notice, and the child must be living or found within the state.

<sup>39</sup> There is no requirement that aggravated circumstances be alleged in the petition, or determined at the adjudicatory hearing, so aggravated circumstances could be asserted later, either by amendment of the petition or by written motion, with notice and opportunity for hearing. See Idaho Code §16-1605, §16-1608.

- ♦ committed a felony assault that results in serious bodily injury to any child of the parent; or the parental rights of the parent to a sibling have been terminated involuntarily.<sup>40</sup>

The statute further provides that aggravated circumstances ‘include but are not limited to’ those specifically listed. Two factors should guide the determination of whether other circumstances constitute aggravated circumstances: whether the circumstances are similar in severity to those listed in the statute, and whether the circumstances are such that no effort should be made to reunify the family.

## **9. Considerations in determining whether a CPA petition should be filed**

- ♦ Does the case meet the statutory requirements for jurisdiction? Is the child abandoned, abused, neglected, or homeless, or does the child lack a stable home environment?
- ♦ Can the case be proven in court? Are there witnesses who can testify to the conduct or conditions? Are there photographs, medical records, or other exhibits to demonstrate the conduct or conditions?
- ♦ What further investigation is necessary to gather essential information? What further efforts are necessary to ensure that the information is in a form that is admissible in court?
- ♦ What do you seek to accomplish by filing the case? Temporary emergency protection? Family cooperation in services? Permanent removal of the child?
- ♦ Can the goal be accomplished by another method, such as a voluntary agreement? (Voluntary agreements are discussed in Chapter II).
- ♦ Are necessary services available only through a child protection proceeding?

## **E. What Relief Can be Sought in a Child Protection Case?**

The relief that can be sought includes both temporary relief pending the adjudicatory hearing, and other forms of relief that can be sought as part of the dispositional phase of the adjudicatory hearing.

### **1. Emergency removal**

As noted above, the petitioner can seek emergency removal of the child or the alleged offender through an endorsement on summons. The request for this relief can be included in the petition, or it can be requested by separate written motion.

### **2. Shelter care**

The petitioner can ask that the child be placed in shelter care, pending the adjudicatory hearing. If the petitioner is asking that the child be placed in shelter care pending the adjudicatory hearing, then in the vast majority of cases the child will already have been removed pursuant to a declaration of imminent danger or an endorsement on summons. As noted above, the statute requires the petition to state whether the child is in shelter care and the date the child was placed in shelter care, among other things.<sup>41</sup>

<sup>40</sup> Idaho Code §16-1608(e)(4).

<sup>41</sup> Idaho Code §16-1605(7).

## CHAPTER III: INITIATING A CPA CASE

### 3. Legal custody or protective supervision

At the adjudicatory hearing, the court first determines whether the child comes within the jurisdiction of the act, and then determines the disposition of the child. There are two options for disposition: vesting legal custody of the child in IDHW, or placing the child in the child's own home under protective supervision.<sup>42</sup> There is more information about the adjudicatory hearing in Chapter V, and particularly about dispositional issues, in Chapter V, part F.2. The petition should state the disposition sought, but the petition could state a generic request for legal custody and/or protective supervision, in accordance with the CPA.

### 4. Protective orders

At the adjudicatory hearing, after the child is found to be within the jurisdiction of the act, the court can enter protective orders.<sup>43</sup> There is more information about entry of protective orders at the adjudicatory hearing in Chapter V, part F.2. At the shelter care hearing, after the court finds that there is reasonable cause to believe that the child is within the jurisdiction of the act, the court can enter protective orders pending the adjudicatory hearing.<sup>44</sup> There is more information about entry of protective orders at the shelter care hearing in Chapter IV, part D. Finally, as noted above, the court can issue a protective order when an endorsement on summons is requested, if it appears that the child is within the jurisdiction of the CPA, but a protective order would enable the child to safely remain at home.<sup>45</sup> If a protective order is sought, the petition should set forth the proposed terms and conditions of the protective order.

### 5. Child support

If the petition asks that the child be placed in the legal custody of the agency, the petition should also ask that the child's parent(s) or legal guardian be required to pay child support in a reasonable amount. The CPA specifically provides that, whenever legal custody of the child is vested in someone other than the child's parents, and after due notice, the court's decree may require the parent(s) or other persons legally responsible for the support of the child to pay child support.<sup>46</sup> [

### F. The Role of the Petitioner

The petitioner in a CPA case is the county prosecutor or a deputy attorney general.<sup>47</sup> The child protective agency in Idaho is the Idaho Department of Health and Welfare (IDHW). IDHW is an essential participant in child protection cases, because of the extensive duties imposed on the agency by the CPA, but is not a party to the case. The prosecuting attorney (the county prosecutor or deputy attorney general filing the case) represents the state's interest in the proceeding; IDHW is not the attorney's "client." The prosecuting attorney or attorney general has prosecutorial discretion, and it is ultimately up to the prosecuting attorney whether to file the case, and how to proceed with the prosecution of the case. Even if a child has been declared in imminent danger, the prosecuting attorney can decide that the filing of a CPA petition is not appropriate, and direct that the child be returned home.

---

<sup>42</sup> Idaho Code §16-1608

<sup>43</sup> Idaho Code §16-1608(h).

<sup>44</sup> Idaho Code §16-1614(e)(6).

<sup>45</sup> Idaho Code §16-1606(e)

<sup>46</sup> Idaho Code §16-1622

<sup>47</sup> Idaho Code §16-1605

Although the prosecuting attorney has independent prosecutorial discretion, the roles of the prosecuting attorney and the agency are, as a practical matter, highly interdependent. The successful resolution of a child protection case requires a high level of commitment by both the assigned attorney and the assigned caseworker, and in particular, a commitment by both to cooperation and communication.

It is important that the attorney representing the state be sufficiently knowledgeable and experienced in trial practice generally and in child protection specifically, not only to ensure quality representation of the state's interest, but also to provide leadership in the investigation, prosecution, and resolution of child protection cases. The same attorney should represent the state throughout the case, to ensure consistent, goal-oriented representation of the state's interest in the case.

It is essential that the attorney for the state make continuing efforts to create and maintain an active partnership with the local agency case workers and local law enforcement officers. The attorney must rely on caseworkers and involved law enforcement officers to gather information and prepare recommendations to be presented to the court. Caseworkers and law enforcement officers must rely on the attorney to ensure that the information is admitted into evidence by the court and is legally sufficient to support the recommended action. Regular communication and active cooperation between counsel for the state, agency caseworkers, and involved law enforcement officers is essential to the investigation, prosecution, and resolution of child protection cases.

### **1. Multi-disciplinary teams (MDTs)**

The CPA provides that the prosecuting attorney in each county is responsible for the development of an interagency multidisciplinary team or teams for investigation of child abuse and neglect referrals in each county.<sup>48</sup> The team must include the prosecutor or a deputy prosecutor, IDHW personnel, and law enforcement personnel. The team can include others whose knowledge or expertise may be of assistance, either as permanent members or as periodic participants. These might include school officials, medical personnel, juvenile and adult probation and parole officers, or representatives from local domestic violence or guardian ad litem programs.

The teams are required to develop a written protocol for the investigation of child protection cases and for interviewing alleged victims of alleged abuse and neglect. Each team is required to develop written agreements, signed by member agencies, specifying the role of each agency, procedures for risk assessment, and procedures to be followed to ensure the child's safety, including removal of children and alleged offenders.

It is not possible to overemphasize the importance of an effective MDT. Ensuring the safety and welfare of the children of the community requires a community-based approach. Communication and cooperation between the local participant agencies and other community

---

<sup>48</sup> Idaho Code § 16-1609A



## CHAPTER III: INITIATING A CPA CASE

resources is essential to the effective investigation of child abuse and neglect, and to the successful prosecution, and resolution of child protection cases. MDTs are an essential tool in achieving this communication and cooperation, and the commitment of the team members, and the leadership of the prosecutor's office, is essential to the effectiveness of the MDT.

### **G. Special Considerations in a Rule 16 Expansion**

Idaho Juvenile Rule 16 allows the court to expand Juvenile Corrections Act proceedings to Child Protective Act proceedings and to expand Child Protective Act proceedings to Juvenile Corrections Act proceedings. This power to expand a juvenile or child protection matter allows the Court to take action in the best interest of child or society, while holding parents and child accountable when facts are presented in Court.

When these expansions occur, it is in the best interest of the children that courts, prosecutors, IDHW, the Department of Juvenile Corrections, local juvenile justice officials, and families work together to bring order back into the lives of these families before the court.

As when a case is initiated as a child protection case, the court should remain actively involved in expansion cases over the period of the proceedings. The judge should not simply make a one-time decision concerning the care, custody, and placement of the child, but rather make a series of decisions over time. In effect, step-by-step the judge must determine how best to assure the safe upbringing of the child, and protection of society.

It is important to note that the expansion provisions of Rule 16 do not preclude the prosecutor from filing a separate Child Protection Petition or Juvenile Corrections Act Petition if the prosecutor deems such filing supported by the facts of the case. The rule gives the power to the court to also make the decision to expand a case.

Revisions to IJR 16 are currently being proposed. Those revisions are consistent with the best practice suggestions contained in these materials

### **1. Expanding a Juvenile Corrections Act Proceeding**

Idaho Juvenile Rule 16 currently provides in relevant part:

- (a) If at any stage of a J.C.A. proceeding the court has reasonable cause to believe that a juvenile living or found within the state is neglected, abused, abandoned, homeless, or whose parent(s) or other legal custodian fails or is unable to provide a stable home environment, as set forth in I.C. Section 16-1603, the court may order the proceeding expanded to a C.P.A. proceeding. Any order expanding the proceeding to a C.P.A. proceeding must be in writing and contain the factual basis found by the court to support its order.
- (b) Upon expanding the proceeding to a C.P.A., the court may order the juvenile placed in shelter care under the C.P.A. if that is in the best interest of the juvenile and needed for the juvenile's protection. If the juvenile is placed in shelter care, a shelter-care hearing under the C.P.A. must be held within 48 hours, excluding Saturdays, Sundays, and holidays, and notice thereof shall be given to the juveniles parents(s), guardian, or custodian, and to the Department of Health and Welfare.

- (c) Notice of an order expanding a J.C.A. proceeding to a C.P.A. proceeding shall be given to the juvenile's parent(s), guardian, or custodian, the Idaho Department of Health and Welfare, the prosecuting attorney, and the Department of Juvenile Corrections if the juvenile is currently under commitment to the Department, pursuant to these rules and the rules of civil procedure.
- (d) No further C.P.A. petition will be required. Any adjudicatory hearing pursuant to I.C. Section 16-1608 will be held within 30 days of the court's determination to expand the proceeding to a C.P.A. proceeding. A notice of the hearing will be served upon the parent(s), the Department of Health and Welfare, and the juvenile as though a petition under the C.P.A. has been filed. The burden of going forward with the evidence at the adjudicatory hearing shall remain with the prosecuting attorney.
- (e) The proceeding under the J.C.A. will continue unless otherwise ordered by the court. The court may consolidate hearings under both the J.C.A. and the C.P.A. if the purposes of both acts can be served and the rights of the participants are not prejudiced.
- (f) The Department of Juvenile Corrections shall have standing as an interested party in the child protective action if the juvenile is in the custody of the Department.

While the rule provides the framework for expansion it does not provide a procedural outline of how an expansion case proceeds. Two different approaches have been filed in the different Idaho courts. In some districts, the Court's expansion order serves as the petition for the child protection case and no new petition is filed by the local prosecutor. In other districts, prosecutors have felt uncomfortable proceeding in the child protection case without a petition setting forth the specific allegations of abuse and neglect. In these districts, prosecutors commonly file a new child protection petition if they determine that the facts support jurisdiction under the Child Protection Act.

In either of these situations, it is important in an expansion situation that the court provide as much guidance as possible as to the basis for the expansion and the court's expectations of the various parties. If the court is aware that a juvenile case could potentially be converted into a child protection case, the court should request a representative from IDHW to be present at the hearing. It is recommended that the court to provide the following to the prosecutor and IDHW:

- ◆ In addition to the minimum language required for this order, provide specific information justifying the initiation of a child protection case;
- ◆ Direction to IDHW on what is the court expectations in this case – should an investigation be initiated, etc..;
- ◆ Explanation to the parents and other legal guardians that the court has expanded this case, what this means, and the reasons for the expansion;
- ◆ Direction to the juvenile probation department to provide the following information and assistance that would aid and help to expedite the C.P. investigation:
  1. a completed social history, evaluations if available at the same time of notice to IDHW.
  2. documentation of what attempts has the juvenile probation department taken to get the parents to comply with juvenile court orders, and what the results of these attempts were;
  3. information regarding the juvenile probation officer's reasonable belief and evidence that abuse, abandonment, or neglect of a child has taken place and any information supporting that belief.
- ◆ The Court should also order:

## CHAPTER III: INITIATING A CPA CASE

1. a joint juvenile probation/ IDHW staffing meeting to share information about the case;
2. that juvenile probation assist the IDHW child protection investigator in the investigation as requested;
3. that if the juvenile resides in DJC custody, DJC will adhere to the above recommendations along with the juvenile probation department;
4. that expansion of the J.C.A. proceedings to child protection proceedings remain open until courts concern has been satisfied and in agreement of the closure.<sup>49</sup>

In many cases it is appropriate and recommended by the Department of Juvenile Corrections that the JCA proceeding remain open so that the juvenile may be held accountable for her or his actions independent of resolving issues regarding the juvenile's care. When the custody of the child resides with the DJC and there is an open child protection case, the court should make available the records of the child protection proceeding to the DJC, according to Idaho Code Section 16-1621. The court may also order the IDHW to make available its records to the DJC according to Idaho Code Section 16-1623 (f). This is to be done in the best interest of the child, so that DJC can provide proper coordination of treatment and appropriate placement with the DHW.

If DJC has a juvenile in its custody and the juvenile is the subject of an open child protection case. DJC should will invite participation from IDHW to remain involved in juvenile case, and collaboratively plan for the after care of the juvenile. IDHW will continue to work with the family to resolve the child protection issues for the safe return of the juvenile, as well as permanency planning.

### **2. Special Issues When Juvenile Ordered to Shelter Care**

Special concerns are presented when the court orders a juvenile into shelter care as part of a Rule 16 expansion. If the judge orders the juvenile to shelter care, the Rule 16 order is the first order in the case sanctioning removal of the child from the home. As such it must contain the findings describe above in part A.4 of this chapter.

### **H. Checklist for Initiating a CPA Case**

#### **Notice of state action (where child is declared in imminent danger)**

##### **Petition (contents)**

- ◆ Signed by county prosecutor or deputy attorney general, and verified.
- ◆ The facts which bring the child within the jurisdiction of the CPA, including a description of the actions of each parent. The grounds for jurisdiction, such as abuse or neglect, are described later in this chapter.
- ◆ The name, birthdate, sex, and residence address of the child.
- ◆ The name, birthdate, sex, and residence address of all other children living at or having custodial visitation at the same home as the child named in the title to the petition.
- ◆ The names and residence addresses of both the mother and father, guardian or other custodian. If none of these persons reside or can be found within the state, the name of any known adult relative residing within the state.

---

<sup>49</sup> These best practice recommendations are incorporated in the proposed revisions to Rule 16

- ◆ The names and residence addresses of each person having sole or joint legal custody of any of the children named in the petition.
- ◆ Whether a court has adjudicated the custodial rights of the parents of the child named in the title of the petition, and if so, the custodial status of the child.
- ◆ Whether there is a legal document controlling the custodial status of any of the children.
- ◆ Whether the child is in shelter care, and if so, the type and nature of the shelter care, the circumstances justifying the shelter care, and the date and time the child was placed in shelter care.
- ◆ If the child has been or will be removed from the home, a statement that:
  - (a) remaining in the home was contrary to the welfare of the child,
  - (b) it is in the best interest of the child to place the child in the custody of IDHW or other authorized agency, and
  - (c) reasonable efforts were made to prevent the removal of the child or reasonable efforts to prevent placement were not required as the parent subjected the child to aggravated circumstances.
- ◆ If the state is seeking a determination that the parent subjected the child to aggravated circumstances, a statement of the grounds and the facts that bring the parent's actions within those grounds.
- ◆ Whether the child is an Indian child, and if so, the name of the child's Indian custodian (if any) and Indian tribe. The purpose is to ensure an early determination of whether the proceeding is subject to the requirements of the Indian Child Welfare Act, which is discussed later in this chapter.
- ◆ Prayer for relief
  - (a) Endorsement on summons, if one is sought.
  - (b) Shelter care hearing and order, if child or alleged offender has been removed or if removal is sought.
  - (c) Adjudicatory hearing, decree determining child within jurisdiction of court and CPA, and disposition to legal custody or protective supervision of agency, in accordance with CPA.
  - (d) Protective orders, if sought.
  - (e) Child support, if seeking legal custody of child.

### **Summons**

- ◆ In form required by IDR 34.
- ◆ For each person to be joined, including each parent, legal guardian, and custodian.
- ◆ If the child is an Indian child, notice to Indian custodian and tribe of their right to intervene, as required by ICWA.
- ◆ Endorsement, if endorsement on summons is sought.

### **Supporting Affidavits**

- ◆ Information necessary to support findings and conclusions the court is required to make for endorsement on summons, if one is sought:
- ◆ It appears that the child is within the jurisdiction of the CPA
- ◆ It appears that it would be contrary to the welfare of the child to remain in the home, and it would be in the best interest of the child to be placed in shelter care.

## CHAPTER III: INITIATING A CPA CASE

- ◆ Information necessary to support findings and conclusions the court is required to make at the shelter care hearing, if the child or alleged offender has been removed from the home, or if removal is sought.
  - (a) A CPA petition has been filed.
  - (b) There is reasonable cause to believe that the child comes within the jurisdiction of the CPA
  - (c) Reasonable efforts to prevent placement of the child in shelter care were made but were not successful, or reasonable efforts to prevent placement could not be made because of immediate danger to the child.
  - (d) The child cannot be placed in the temporary sole custody of a parent having joint custody of the child.
  - (e) It is contrary to the welfare of the child to remain in the home, and it is in the child's best interest to be placed in shelter care pending the adjudicatory hearing.
- ◆ Information necessary to determine terms and conditions of a protective order, if a protective order is sought pending the adjudicatory hearing.

### Service of process

- ◆ By personal service, where practicable.
- ◆ If personal service is not practicable:
  - (a) Verified motion or motion with supporting affidavit, stating:
    - Efforts made to identify, locate, and serve missing party.
    - Address where service of process by registered mail is most likely to achieve actual notice, and why.
  - (b) Newspaper of general circulation most likely to achieve actual notice, and why.
  - (c) Proposed order.
- ◆ If the child is an Indian child, by registered mail to the child's Indian custody, and Indian tribe, or if unknown, to the Secretary of Interior, in accordance with ICWA.
- ◆ Return of service filed with court, where personal service completed.
- ◆ Affidavit of service filed with court, where service made by registered mail.
- ◆ Affidavit of publication filed with court, where service made by publication.